

**DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH**

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in section 5(a) of the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984, D.C. Law 5-48, D.C. Official Code §44-504(a) (hereinafter “the Act”), and in accordance with Mayor’s Order 98-137, dated August 20, 1998, hereby gives notice of the adoption of the following amendments to the licensure, construction and operating standards for nursing facilities.

These rules were first adopted as emergency rulemaking on March 5, 2002, and were published as emergency and proposed rulemaking on April 5, 2002, at 49 DCR 3046. Although some comments were received, none necessitated any changes in the rulemaking. Following the required period of Council review, the rules were deemed approved by the D.C. Council on June 20, 2002.

The following Sections of Chapter 32 of Title 22 of the DCMR are amended to read as follows:

Section 3211 is amended as follows:

3211 NURSING PERSONNEL

3211.1 Sufficient nursing time shall be given to each resident to ensure that the resident receives the following:

- (a) Treatments, medications, diet and nutritional supplements and fluids as prescribed, and rehabilitative nursing care as needed;
- (b) Proper care to minimize pressure ulcers and contractures and to promote the healing of ulcers;
- (c) Assistance in daily personal grooming so that the resident is comfortable, clean, and neat as evidenced by freedom from body odor, cleaned and trimmed nails, and clean, neat and well-groomed hair;
- (d) Protection from accident, injury, and infection;
- (e) Encouragement, assistance, and training in self-care and group activities;
- (f) Encouragement and assistance to:

- (1) Get out of bed and dress or be dressed in his or her own clothing, and shoes or slippers, which shall be clean and in good repair;
- (2) Use the dining room if he or she is able; and
- (3) Participate in meaningful social and recreational activities;
- (g) Prompt, unhurried assistance if he or she requires or requests help with eating;
- (h) Prescribed adaptive self-help devices to assist him or her in eating independently;
- (i) Assistance, if needed, with daily hygiene, including oral care; and
- (j) Prompt response to an activated call bell or call for help.

3211.2 Each facility shall have at least the following employees:

- (a) At least one (1) registered nurse on a twenty-four (24) hour basis, seven (7) days a week;
- (b) Twenty-four (24) hour licensed nursing staff sufficient to meet nursing needs of all residents;
- (c) At least one practical or registered nurse, serving as charge nurse, on each unit at all times; and
- (d) A minimum of two (2) nursing employees per nursing unit, per shift.

3211.3 Beginning no later than January 1, 2005, each facility shall employ sufficient nursing staff to provide a minimum daily average of 3.5 nursing hours per resident per day. Nursing staff shall be provided in accordance with the following minimum staff-to-resident ratios:

- (a) Licensed nurses (RN or LPN) providing planning, coordination, and supervision at the unit level:

 Day Shift – 1 FTE for each 35 residents (0.23 hours per resident day)
 Evening Shift – 1 FTE for each 45 residents (0.18 hours per resident day)
 Night Shift – 1 FTE for each 50 residents (0.16 hours per resident day)
- (b) Direct care staff (RN, LPN, or CNA) providing treatment, medications, and other patient care:

Day Shift – 1 FTE for each 5 residents (1.6 hours per resident day)
Evening Shift – 1 FTE for each 10 residents (0.8 hours per resident day)
Night Shift – 1 FTE for each 15 residents (0.53 hours per resident day)

- 3211.4 The staffing requirements in subsection 3211.3 shall be adjusted upward for residents with higher nursing care needs and for residents with more acute conditions.
- 3211.5 The Department of Health may consider a waiver of the staffing requirements in subsection 3211.3 for a facility that has had, within the previous three (3) years, no deficiencies related to resident care that have exceeded the federal C level in scope and severity (no actual harm; potential for only minimal harm). The Department may also consider a waiver for a facility that has had, within the previous three (3) years, one (1) deficiency related to resident care at the federal D level in scope and severity (an isolated incident; no actual harm; potential for more than minimal harm), if the facility has demonstrated an otherwise good level of care.
- 3211.6 To meet the requirements of subsections 3211.2 and 3211.3(b), facilities of thirty (30) licensed occupied beds or more shall not include the Director of Nursing Services or any other nursing supervisory employee who is not providing direct resident care.
- 3211.7 Weekly time schedules shall be maintained and indicate the number and classifications of nursing personnel, including relief personnel who work on each unit for each tour of duty.
- 3211.8 Nursing personnel, licensed practical nurses, certified nurse aides, nurse aides, orderlies, and ward clerks shall be assigned duties consistent with their education and experience and based on the characteristics of the patient load.
- 3211.9 A facility shall not employ an individual, other than a certified nurse aide, as a nurse aide unless that person is enrolled and actively participating in a training and competency evaluation program approved by the District.
- 3211.10 A facility shall not employ an individual, other than a certified nurse aide, as a nurse aide if that person has been employed as a nurse aide for six (6) of the immediately preceding twelve (12) months and he or she has not completed a training and competency evaluation program approved by the District.
- 3211.11 The facility shall provide regular performance review and regular in-service education to ensure that individuals employed as nurse aides, including certified nurse aides, are competent to perform services as nurse aides.

- 3211.12 The facility shall ensure that nurse aides, including certified nurse aides, are competent in those skills necessary to care for residents' needs, as identified in the residents' individualized assessments and plans of care.

Section 3216 is amended as follows:

3216 FREEDOM FROM RESTRAINTS

- 3216.1 Each resident has the right to be free from unnecessary physical and chemical restraints.
- 3216.2 Each facility shall have written policies which define its approach to the use of physical and chemical restraints.
- 3216.3 If the facility employs a chemical or physical restraint, the facility shall include in the resident's interdisciplinary care plan a program to reduce or eliminate the use of the restraint.
- 3216.4 Physical restraints shall only be applied if:
- (a) The facility has explored or tried less restrictive alternatives to meet the resident's needs and such trials have been documented in the resident's medical record as unsuccessful;
 - (b) The restraint has been ordered by a physician, to treat a medical symptom, for a specified period of time;
 - (c) The resident is released, exercised and toileted at least every two (2) hours, except when a resident's rest would be unnecessarily disturbed;
 - (d) The use of the restraint does not result in a decline in the resident's physical, mental, psychosocial or functional status; and
 - (e) The use of the restraint is assessed and re-evaluated when there is a significant change in the resident's condition, and on an ongoing basis until the need for the restraint no longer exists.
- 3216.5 In an emergency and when alternative actions are not successful, the placement of an appropriate physical restraint may be authorized by a registered nurse only to protect the resident from immediate injury to himself or herself or to protect others, in which case a written order of a physician or nurse practitioner shall be obtained by a licensed nurse within four hours.
- 3216.6 Chemical restraints shall not be administered unless:

- (a) Ordered by a physician or nurse practitioner after thorough interdisciplinary assessment and care planning, including an evaluation of alternatives to the use of chemical restraints and behavioral interventions to manage and improve behavioral symptoms, which must be carried out and documented in the resident's medical record;
- (b) The use of the chemical restraint does not result in a decline in the resident's physical, mental, psychosocial or functional status; and
- (c) The use of the restraint is re-evaluated periodically until the need for the restraint no longer exists.

Section 3222 is renumbered as Section 3221.

A new Section 3222 is added as follows:

3222 IMMUNIZATIONS

- 3222.1 As described further in this Section, each facility shall ensure that each resident and each employee has either received immunization against influenza virus or has refused such vaccination, and that each resident and each employee indicated in subsection 3222.6 has either received immunization against pneumococcal disease or has refused such vaccination. The facility shall be required to maintain written evidence of each such immunization or refusal.
- 3222.2 Influenza and pneumococcal immunizations shall be provided and updated in accordance with the latest recommendations of the Advisory Committee on Immunization Practices (ACIP) of the Centers for Disease Control and Prevention. To the extent that the ACIP recommendations may differ from the terms of this Section, the ACIP recommendations shall control.
- 3222.3 Except as provided in subsection 3222.9, each resident and each employee shall, no later than November 30th of each calendar year or six (6) weeks after the vaccination becomes readily available in the District of Columbia, whichever is later, undergo immunization for influenza virus as required pursuant to subsection 3222.2. The facility shall provide the immunization to each resident, except as described in subsection 3222.4, and shall document the immunization.
- 3222.4 Pursuant to subsection 3222.3, each resident or employee may obtain the required immunization from a medical provider of his or her choice. If the resident or employee obtains such immunization from a provider other than the facility, the resident or employee shall provide the facility, no later than November 30th or six (6) weeks after the vaccination becomes readily available in the District of Columbia, whichever is later, with documentation of the immunization. The facility shall record such documentation within twenty-four (24) hours of its receipt.

- 3222.5 The facility shall, for each resident admitted between December 1st and March 31st, and for each employee hired between December 1st and March 31st, determine, within seventy-two (72) hours of admission or the start of employment, whether the resident or employee has received immunization against influenza virus as required pursuant to subsections 3222.2, 3222.3, and 3222.4. If the facility determines that a resident has not received such immunization, the facility shall provide it within seventy-two (72) hours of the determination, except as provided in subsections 3222.4 and 3222.9. If the facility determines that an employee has not received such immunization, the facility shall instruct the employee to obtain the immunization and to provide documentation thereof, or of refusal, to the facility within seven (7) days of the determination.
- 3222.6 Except as provided in subsection 3222.9, each resident and each employee in the categories described below shall, no later than one hundred eighty (180) days after the effective date of this Section or thirty (30) days after admission to the facility or the start of employment, whichever is later, undergo immunization for pneumococcal disease as required pursuant to subsection 3222.2. The facility shall provide the immunization to each resident, except as described in subsection 3222.7, and shall document the immunization. The following persons shall undergo immunization for pneumococcal disease:
- (a) Residents and employees sixty-five (65) years of age or older;
 - (b) Residents and employees under the age of sixty-five (65) years with chronic cardiovascular disease, chronic pulmonary disease, diabetes mellitus, alcoholism, chronic liver disease, cerebrospinal fluid leaks, or functional or anatomic asplenia; and
 - (c) Residents and employees under the age of sixty-five (65) years who are immunocompromised, receiving immunosuppressive therapy, or who have received an organ or bone marrow transplant.
- 3222.7 Pursuant to subsection 3222.6, each affected resident or employee may obtain the required immunization from a medical provider of his or her choice. If the resident or employee obtains such immunization from a provider other than the facility, the resident or employee shall provide the facility, no later than one hundred eighty (180) days after the effective date of this Section or thirty (30) days after admission to the facility or the start of employment, whichever is later, with documentation of the immunization. The facility shall record such documentation within twenty-four (24) hours of its receipt.
- 3222.8 Each resident and each employee affected by subsection 3222.6 shall be revaccinated against pneumococcal disease according to the schedule below. The facility shall provide the revaccination or shall obtain documentation of the revaccination provided elsewhere, as required by subsections 3222.6 and 3222.7,

and shall document the revaccination, according to the schedule below. The following persons shall be revaccinated as indicated:

- (a) Residents and employees sixty-five (65) years of age and older: a single revaccination at or after age sixty-five (65) if the person has been previously vaccinated and five (5) or more years have elapsed since the previous vaccination;
- (b) Residents and employees under the age of sixty-five (65) years with chronic cardiovascular disease, chronic pulmonary disease, diabetes mellitus, alcoholism, chronic liver disease, or cerebrospinal fluid leaks: a single revaccination at or after age sixty-five (65) if the person has been previously vaccinated and five (5) or more years have elapsed since the previous vaccination; and
- (c) Residents and employees under the age of sixty-five (65) years with functional or anatomic asplenia, or who are immunocompromised, receiving immunosuppressive therapy, or have received an organ or bone marrow transplant: a single revaccination if five (5) or more years have elapsed since the previous vaccination.

3222.9 No resident or employee shall be required to receive either an influenza virus immunization or a pneumococcal disease immunization if such immunization is medically contraindicated for that individual, or if such immunization is against the resident or employee's religious beliefs, or if the resident, the resident's representative or legal guardian, or the employee knowingly refuses such immunization.

Section 3299 is amended as follows:

3299 DEFINITIONS

For purposes of this Chapter, the following terms shall have the meanings ascribed:

Act - Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984, D.C. Law 5-48, D.C. Official Code § 44-501 *et seq.*

Administrator - a person who is licensed as a nursing facility administrator by the District of Columbia and who is responsible for the day-to-day operation of a nursing facility.

BOCA - Building Officials and Code Administrators.

Certified Nurse Aide – an individual who, as a result of training and demonstrated competencies, provides nursing-related services to residents in a nursing facility, and who has obtained certification or credentials from the District of Columbia as being qualified to perform

such services, pursuant to Chapter 32 of Title 29 of the District of Columbia Municipal Regulations.

Chemical restraint - any drug prescribed to control mood, mental status or behavior.

Communicable disease - any disease denominated a communicable disease under Title 22 of the District of Columbia Municipal Regulations, Section 201, including without limitation, any illness due to an infectious agent or its toxic product, which is transmitted directly or indirectly to a well person from an infected person, animal, or ectoparasite; or any illness due to an infectious agent or its toxic product which is transmitted through the agency of an intermediate host, vector or by exposure within the immediate environment. Communicable disease also shall mean any disease occurring as an outbreak of illness or toxic conditions, regardless of etiology in an institution or other identifiable group of people.

DCMR - District of Columbia Municipal Regulations.

Dentist - an individual licensed to practice dentistry in the District of Columbia pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986, D.C. Law 6-99, D.C. Official Code § 3-1201.01 *et seq.*

Dietary service - an organized service applying principles of nutrition and management to menu planning, food preparation and service provided to residents and personnel in a facility.

Dietitian - a person who is qualified, based upon either registration by the Commission on Dietetic Registration of the American Dietetic Association or on the basis of education, training or experience, to identify dietary needs and to plan and implement dietary programs.

Director - the Director of the Department of Health.

District - the District of Columbia.

Emergency – an unexpected serious occurrence which usually requires immediate attention.

Facility - the overall organization, program, and services of a nursing facility, including staff personnel, the building or buildings, equipment, and supplies necessary for implementation of health and nursing services.

Food Service Manager - a qualified Dietitian; or a person who has successfully completed a two (2) year course in food service management, eligible for technician membership in the American Dietetic Association and has had supervised work experience in all phases of food services.

Interdisciplinary care plan - a comprehensive plan of care and treatment designed for an individual resident that includes measurable objectives and timetables to meet the resident's medical, nursing, mental and physical needs.

Interdisciplinary care team - all facility personnel involved in the care of a resident, including medical, nursing, social services, dietary, therapeutic activities, rehabilitation services and others involved as necessary.

Licensed practical nurse - a person who has graduated from a school of practical nursing approved by the National Association of Practical Nurse Education and who is currently licensed to practice in the District of Columbia in accordance with the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986, D.C. Law 6-99, D.C. Official Code § 3-1201.01 *et seq.*

Licensee - the person or entity to whom a license to operate a nursing facility is issued, and who is legally responsible for operating a facility.

Medicaid - medical assistance provided under a State plan approved under the Social Security Act, approved August 4, 1935, P.L. 74-271, 49 Stat. 620, 42 U.S.C. §§ 1396-1396v, subchapter XIX, chapter 7.

Medical Director - a physician, appointed by a nursing facility, who is currently licensed to practice medicine in the District of Columbia, who has experience in adult medicine and has knowledge of geriatric medicine.

Medically contraindicated – should not be administered to an individual because of a condition that the individual has, such that administration of the treatment, service, medication, or immunization at issue will be detrimental to the individual's health.

Medicare - the federal health insurance program for the aged and disabled under the Social Security Act, approved August 4, 1935, P.L. 74-271, 49 Stat. 620, 42 U.S.C. §§ 1395-1395ccc, subchapter XVIII, chapter 7.

New facility - a nursing facility for which construction is begun after the effective date of these rules or a building for which conversion to a nursing facility is begun after the effective date of these rules.

NFPA - National Fire Prevention Association.

Nurse aide - an individual who, as a result of training and demonstrated competencies, provides nursing-related services to residents in a nursing facility. This definition includes certified nurse aides, as defined above. This definition does not include individuals who volunteer to provide such services without pay, but does include individuals who are hired by residents and their families to provide care to residents in a nursing facility, and includes nurse aides supplied by an agency as well as those actually employed by the facility.

Nurse practitioner - a person licensed as an advanced registered nurse under the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986, D.C. Law 6-99, D.C. Official Code § 3-1201.01 *et seq.* to perform medical diagnosis, treatment, prescription and other functions authorized by the Act and in collaboration with a physician, osteopath or dentist

who shall be responsible for the overall medical direction of the health-care team. A nurse practitioner may also be known as an Advanced Registered Nurse.

Nursing facility - a 24-hour institution or distinct part of a 24-hour institution that: (1) is primarily engaged in providing nursing care and related services to residents who require medical or nursing care, or rehabilitation services for the rehabilitation of persons who are injured, disabled, or sick; (2) is not primarily for the care and treatment of mental diseases; and (3) has in effect a transfer agreement that meets the requirements of 42 U.S.C. §1395 with one (1) or more hospitals that have a provider agreement in effect that meets the requirements of 42 U.S.C. §1395.

Nursing services - health-care related work performed by licensed nurses, licensed practical nurses and certified nurse aides for the benefit of nursing facility residents.

Nursing unit - a group of resident rooms, staff work areas, service areas and resident support areas, the size and configuration of which is based on the organizational patterns of staffing, functional operations and communications for the facility.

Person - an individual, partnership, corporation, association, organization, executor, administrator, guardian, trustee or agent.

Physical restraint - any physical device intended to confine or substantially restrict the movement of a resident, such as, but not limited to, a restrictive vest, a protective or safety device, such as a side rail, seat belt, padded mitts or geriatric chairs.

Physician - an individual licensed to practice medicine in the District of Columbia pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986, D.C. Law 6-99, D.C. Official Code § 3-1201.01 *et seq.*

Physician assistant - an individual licensed or certified in the District of Columbia as a physician assistant pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986, D.C. Law 6-99, D.C. Official Code § 3-1201.01 *et seq.*

Podiatrist - an individual licensed in the District of Columbia to practice podiatry pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986, D.C. Law 6-99, D.C. Official Code § 3-1201.01 *et seq.*

Registered nurse - a person who is licensed and currently registered as a registered nurse in the District of Columbia pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986, D.C. Law 6-99, D.C. Official Code § 3-1201.01 *et seq.*

Relocation - movement of a resident from a bed in the facility to another bed within the facility or to a distinct part of the facility.

Resident - an individual who, because of physical, mental, familial or social circumstances or mental retardation, is residing in a nursing facility.

Resident's Representative - (1) any person who is knowledgeable about a resident's circumstances and has been designated by that resident to represent him or her; or (2) any person who has been appointed by a court or government agency either to administer a resident's financial or personal affairs or to protect and advocate for a resident's rights. If no person has been designated or appointed in accordance with (1) or (2) above, a representative of the D.C. Office of the Long Term Care Ombudsman or a representative acting in accordance with the Health-Care Decisions Act of 1988, effective March 16, 1989, D.C. Law 7-189, D.C. Official Code § 21-2210, shall be the resident's Representative.

State Plan - the comprehensive written commitment by the District of Columbia to administer or supervise the administration of the Medicaid program in accordance with Federal requirements.

State Plan Administrator - the chief manager of the District of Columbia's State Plan.

Therapeutic diet - a dietary regime including the modification or control of calories, increase or decrease of nutrients, changes in textures of food, or restrictions of specific ingredients prescribed by a physician (1) for maintenance and repair of body tissues, and for proper function of body processes, or (2) for the treatment of a resident with a specific illness.

Uniform Federal Accessibility Standards - federal guidelines, published pursuant to the Architectural Barriers Act, 42 U.S.C. §§ 4151-4157, for the design, construction and alteration of buildings to facilitate access by physically handicapped persons.

Unit dose - an individually packaged measure of medication.